

AMENDED IN SENATE JUNE 24, 1999  
AMENDED IN ASSEMBLY APRIL 20, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

## ASSEMBLY BILL

**No. 431**

**Introduced by Assembly Member Dutra**

February 12, 1999

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An act to amend Sections 11302, 11341, 11360, 11404, 11405, 11411, and 11412 of the Business and Professions Code, and Sections 1058.5, 2924, 2924c, 2924f, 2924j, 2924k, 2924l, and 2934a of the Civil Code, relating to ~~trust deeds~~ real estate transactions, and making an appropriation therefor.

### LEGISLATIVE COUNSEL'S DIGEST

AB 431, as amended, Dutra. ~~Property—Real estate transactions: appraisers: trust deeds.~~

(1) Existing law provides for the licensing and certification of real estate appraisers. Existing law provides that a license issued under those provisions is generally valid for 4 years, subject to renewal thereafter. Existing law requires that on and after January 1, 2000, 5% of the amount of license or certificate fees collected under these provisions be credited to the Recovery Account, a continuously appropriated account within the Real Estate Appraisers Regulation Fund.

This bill would instead provide that a license with an effective date of January 1, 2000, or later issued under those provisions is generally valid for 2 years, subject to renewal thereafter, and would decrease licensure and renewal fees, as

*specified. This bill would also delay until January 1, 2003, the date on which 5% of license or certificate fees collected under these provisions are required to be credited to the Recovery Account. Because the aggregate effect of these changes, including changes decreasing the effective duration of licenses, would be to increase licensure fees deposited into the Recovery Account, which is continuously appropriated, this bill would make an appropriation. This bill would also extend certain deadlines applicable to the administration and review of the Recovery Account and would make changes relating to the continuing education requirements of licensees under those provisions.*

(2) Existing law provides for security interests in real property by way of mortgages and deeds of trust. Existing law provides for the recordation of deeds and similar instruments.

This bill would authorize the trustee to decline to issue a trustee's deed in case of certain mistakes, and would authorize the recordation of a notice of rescission of the trustee's deed if the deed has already been issued. It would also provide for the execution and recordation of a notice of rescission and reconveyance if a deed of trust has been mistakenly or wrongfully executed. The bill would provide that these and related recorded notices shall not operate to defeat the interest of a bona fide purchaser or encumbrancer, ~~except as specified~~ *but would provide that a bidder at a trustee's sale as described above would not be deemed a bona fide purchaser or encumbrancer for those purposes.*

~~(2) The~~

*The bill would also provide that in performing acts required in connection with a deed of trust, the trustee shall incur no liability for any good faith error resulting from reliance on information provided in good faith by the beneficiary regarding the nature and the amount of the default under the secured obligation, deed of trust, or mortgage.*

(3) Existing law authorizes the reinstatement of a monetary default under a deed of trust or mortgage in certain circumstances. Existing law provides that no beneficiary, trustee, mortgagee, or their agents or successors shall be liable to a trustor or mortgagor for the failure to allow a reinstatement of the obligation secured by a deed of trust or

mortgage during the period of 5 business days prior to the sale of the security property.

This bill would also provide in those circumstances that there is no liability to any beneficiary under a subordinate deed of trust or mortgage.

(4) Existing law requires a notice of sale under a power of sale contained in a mortgage or deed of trust to contain specified information, including the street address and telephone number of the trustee.

This bill would require that information to be the street address *in this state, which may reflect an agent of the trustee*, and *either a toll-free telephone number or a* telephone number in the state.

(5) Existing law requires notice to certain persons with recorded interests after a sale in which there are proceeds remaining.

This bill would provide that the notice inform the persons that they may be required to provide proof of ownership of the obligation or an indemnity or both. The bill would require the Judicial Council to adopt the form of the notice by July 1, 2000.

The bill would also require a trustee in possession of surplus proceeds not deposited with the court following such notice, to comply with the Unclaimed Property Law, as specified. As the latter law requires moneys received to be deposited in a continuously appropriated fund, the bill would make an appropriation.

(6) Existing law authorizes a trustee to charge costs and expenses, and specifies that if a fee does not exceed \$100, it is conclusively presumed reasonable.

This bill would provide that if the fee does not exceed \$100 or \$150, as specified, it is conclusively presumed reasonable.

(7) Existing law provides that in certain actions in which a deed of trust is involved, the trustee may file a declaration of nonmonetary status, but that parties may file and serve on the trustee a demand to participate in the action.

This bill would instead authorize parties to make a motion to amend pleadings.

(8) Existing law provides for the substitution of trustees in certain circumstances, and requires the beneficiary or beneficiaries to mail a copy of the substitution to be mailed.

This bill would authorize the mailing by authorized agents and would define trustee to include any agent or employee of the trustee who performs some or all of the trustee's duties.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) *The Legislature hereby finds and*  
2 *declares:*

3 *(1) In response to a federal mandate, all states were*  
4 *required to enact a licensing and certification law for real*  
5 *estate appraisers, and California's law was enacted in*  
6 *1990.*

7 *(2) Failure to enact a licensing and certification law*  
8 *could have made real estate loans by federally related*  
9 *financial institutions unavailable in California.*

10 *(3) Since 1990, in the peak years, the California Office*  
11 *of Real Estate Appraisers regulated over 18,000 real estate*  
12 *appraisers.*

13 *(4) Due to changes in California's real estate*  
14 *marketplace, the number of real estate appraisers*  
15 *licensed and certified in California has declined by*  
16 *approximately 40 percent.*

17 *(5) A license fee increase, coupled with cost*  
18 *reductions in the Office of Real Estate Appraisers, is*  
19 *necessary to continue funding the federally mandated*  
20 *appraiser regulatory program in California.*

21 *(b) In providing additional funding through license*  
22 *fee increases in Sections 5 and 6 of this act, it is the intent*  
23 *of the Legislature that the Office of Real Estate*  
24 *Appraisers pursue reductions and cost efficiencies*  
25 *leading to a reduction in annual expenditures of five*  
26 *hundred thousand dollars (\$500,000) from the 1999–00*  
27 *fiscal year expenditure authority, beginning in the*  
28 *2000–01 fiscal year.*

1 SEC. 2. Section 11302 of the Business and Professions  
2 Code is amended to read:

3 11302. For the purpose of applying this part, the  
4 following terms, unless otherwise expressly indicated,  
5 shall mean and have the following definitions:

6 (a) “Agency” means the Business, Transportation and  
7 Housing Agency.

8 (b) “Appraisal” means a written statement  
9 independently and impartially prepared by a qualified  
10 appraiser setting forth an opinion in a federally related  
11 transaction as to the market value of an adequately  
12 described property as of a specific date, supported by the  
13 presentation and analysis of relevant market information.

14 The term “appraisal” does not include an opinion given  
15 by a real estate licensee or engineer or land surveyor in  
16 the ordinary course of his or her business in connection  
17 with a function for which a license is required under  
18 Chapter 7 (commencing with Section 6700) or Chapter  
19 15 (commencing with Section 8700) of Division 3, or  
20 Chapter 3 (commencing with Section 10130) or Chapter  
21 7 (commencing with Section 10500) and the opinion shall  
22 not be referred to as an appraisal. This part does not apply  
23 to a probate referee acting pursuant to Sections 400 to 408,  
24 inclusive, of the Probate Code unless the appraised  
25 transaction is federally related. *For purposes of Section*  
26 *11320, “appraisal” also includes written statements and*  
27 *court testimony prepared or given in connection with*  
28 *acquisitions of real property by federal, state, or local*  
29 *jurisdictions, other than statements and testimony*  
30 *prepared or given by employees of those respective*  
31 *jurisdictions.*

32 (c) “Appraisal Foundation” means the Appraisal  
33 Foundation that was incorporated as an Illinois  
34 not-for-profit corporation on November 30, 1987.

35 (d) “Appraisal Subcommittee” means the Appraisal  
36 Subcommittee of the Federal Financial Institutions  
37 Examination Council.

38 (e) “Director” means the Director of the Office of  
39 Real Estate Appraisers.

(f) “Federal financial institutions regulatory agency” means the Federal Reserve Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Home Loan Bank System, National Credit Union Administration, the Resolution Trust Corporation, and any other agency determined by the director to have jurisdiction over transactions subject to this part.

(g) “Federally related real estate appraisal activity” means the act or process of making or performing an appraisal on real estate or real property in a federally related transaction and preparing an appraisal as a result of that activity.

(h) “Federally related transaction” means any real estate-related financial transaction which a federal financial institutions regulatory agency engages in, contracts for or regulates and which requires the services of a state licensed real estate appraiser regulated by this part. This term also includes any transaction identified as such by a federal financial institutions regulatory agency.

(i) “License” means any license, certificate, permit, registration, or other means issued by the office authorizing the person to whom it is issued to act pursuant to this part within this state.

(j) “Licensure” means the procedures and requirements a person shall comply with in order to qualify for issuance of a license and includes the issuance of the license.

(k) “Office” means the Office of Real Estate Appraisers.

(l) “Secretary” means the Secretary of the Business, Transportation and Housing Agency.

(m) “State licensed real estate appraiser” is a person who is issued and holds a current valid license under this part.

(n) “Uniform Standards of Professional Appraisal Practice” are the standards of professional appraisal practice established by the Appraisal Foundation.

1 (o) "Course provider" means a person or entity that  
2 provides educational courses related to professional  
3 appraisal practice.

4 *SEC. 3. Section 11341 of the Business and Professions*  
5 *Code is amended to read:*

6 11341. A license ~~shall be valid for four years from the~~  
7 ~~date of its issuance~~ issued with an effective date of January  
8 1, 2000, or later shall be valid for two years unless  
9 otherwise extended or limited by the director.

10 *SEC. 4. Section 11360 of the Business and Professions*  
11 *Code is amended to read:*

12 11360. (a) The director shall adopt regulations  
13 governing the process and procedures for renewal of a  
14 license which shall include, but not be limited to,  
15 continuing education requirements, *which shall be*  
16 *reported on the basis of four-year continuing education*  
17 *cycles.*

18 (b) An applicant for renewal of a license shall be  
19 required to demonstrate his or her continuing fitness to  
20 hold a license prior to its renewal. *Applicants shall also*  
21 *fulfill continuing education requirements established*  
22 *pursuant to this section and may certify that they have*  
23 *read and understand all applicable California and federal*  
24 *laws and regulations pertaining to the licensing and*  
25 *certification of real estate appraisers in lieu of being*  
26 *required to take a minimum of four hours of federal and*  
27 *California appraisal-related statutory and regulatory law*  
28 *every four years.*

29 *SEC. 5. Section 11404 of the Business and Professions*  
30 *Code is amended to read:*

31 11404. The fee for an original or renewal real estate  
32 appraiser license *or appraiser trainee license* shall not  
33 exceed ~~six hundred dollars (\$600)~~ *four hundred fifty*  
34 *dollars (\$450), which includes the application and*  
35 *issuance fees.*

36 *SEC. 6. Section 11405 of the Business and Professions*  
37 *Code is amended to read:*

38 11405. The fee for an original or renewal certification  
39 as a state certified real estate appraiser shall not exceed  
40 ~~seven hundred dollars (\$700)~~ *five hundred twenty-five*

1 dollars (\$525), which includes the application and  
2 issuance fees.

3 SEC. 7. Section 11411 of the Business and Professions  
4 Code is amended to read:

5 11411. There shall be separate accounts in the Real  
6 Estate Appraisers Regulation Fund for purposes of  
7 administration and for purposes of recovery. These  
8 accounts shall be known respectively as the  
9 Administration Account and the Recovery Account. On  
10 and after January 1, ~~2000~~ 2003, five percent of the amount  
11 of any license or certificate fee collected under this part  
12 shall be credited to the Recovery Account. The Recovery  
13 Account is a continuing appropriation for carrying out  
14 this chapter.

15 SEC. 8. Section 11412 of the Business and Professions  
16 Code is amended to read:

17 11412. (a) On or before January 1, ~~2000~~ 2002, the  
18 director shall determine the number of complaint cases  
19 containing judicial findings of fraud that may be eligible  
20 for recovery pursuant to future regulations that are  
21 closely analogous to those which have been adopted for  
22 the Real Estate Recovery Fund established in Chapter 6.5  
23 (commencing with Section 10470) of Part 1. This  
24 information shall be used by the director to determine  
25 whether a real estate appraiser Recovery Account is  
26 necessary or whether to recommend that it should be  
27 eliminated.

28 (b) On or before January 1, ~~2001~~ 2004, regulations shall  
29 be adopted for administration of the Recovery Account,  
30 which shall include claims, funding, and administrative  
31 procedures closely analogous to those which have been  
32 adopted for the Real Estate Recovery Fund established in  
33 Chapter 6.5 (commencing with Section 10470) of Part 1.

34 (c) The statute of limitations for claims against the  
35 fund arising between the effective date of this part and  
36 the creation of the fund shall be tolled until the date the  
37 fund is created.

38 SEC. 9. Section 1058.5 of the Civil Code is amended  
39 to read:



1 1058.5. (a) A notice of nonacceptance of a recorded  
2 deed executed by a holder of a security interest, which  
3 notice identifies the security interest, contains a legal  
4 description of the property, properly identifies the  
5 parties to the deed, the date of recordation of the deed,  
6 the county in which the project is located, and the county  
7 assessor's parcel number of the real property referenced  
8 in the deed, may be recorded in the office of the county  
9 recorder where the real property is located.

10 (b) Where a trustee's deed is invalidated by a pending  
11 bankruptcy or otherwise, recordation of a notice of  
12 rescission of the trustee's deed, which notice properly  
13 identifies the deed of trust, the identification numbers  
14 used by the recorder or the books and pages at which the  
15 trustee's deed and deed of trust are recorded, the names  
16 of all trustors and beneficiaries, the location of the  
17 property subject to the deed of trust, and the reason for  
18 rescission, shall restore the condition of record title to the  
19 real property described in the trustee's deed and the  
20 existence and priority of all lienholders to the status quo  
21 prior to the recordation of the trustee's deed upon sale.  
22 Only the trustee or beneficiary who caused the trustee's  
23 deed to be recorded, or his or her successor in interest,  
24 may record a notice of rescission.

25 (c) In the event of a mistake in the opening bid by the  
26 trustee *or beneficiary*, or its subagent, or by the crier at  
27 the trustee's sale, or in the event of a mistaken or an  
28 erroneous sale of property at a trustee's sale, the trustee  
29 may decline to issue the trustee's deed or, in the event  
30 that the trustee's deed has been issued, *the trustee or*  
31 *beneficiary who caused the trustee's deed to be recorded,*  
32 *or his or her successor in interest,* may record a notice of  
33 rescission of the trustee's deed, which notice properly  
34 identifies the deed of trust, the identification numbers  
35 used by the recorder or the books and pages at which the  
36 trustee's deed and deed of trust are recorded, the names  
37 of all trustors and beneficiaries, the location of the  
38 property subject to the deed of trust, and the reason for  
39 rescission, which notice of rescission shall restore the  
40 condition of record title to the real property described in

1 the trustee's deed and the existence and priority of all  
2 lienholders to the status quo prior to the recordation of  
3 the trustee's deed upon sale. Only the trustee *or*  
4 *beneficiary* who caused the trustee's deed to be recorded,  
5 or his or her successor in interest, may record a notice of  
6 rescission.

7 (d) In the event that a reconveyance of a deed of trust  
8 has been mistakenly or wrongfully executed, the trustee  
9 *or beneficiary* who executed the reconveyance, or the  
10 successor thereto, may execute and record a notice of  
11 rescission of reconveyance. The notice of rescission of  
12 reconveyance shall identify the deed of trust and the  
13 deed of reconveyance, the identification numbers used  
14 by the recorder or the books and pages at which the deed  
15 of trust and the deed of reconveyance are recorded, the  
16 names of all trustors and beneficiaries, and a statement  
17 that the reconveyance was mistakenly or erroneously  
18 issued. Recordation of the notice of rescission of  
19 reconveyance shall restore the condition of record title to  
20 the real property described in the deed of trust and the  
21 deed of reconveyance and the existence and priority of all  
22 lienholders to the status quo prior to the recordation of  
23 the deed of reconveyance.

24 ~~(e) Except as to a bidder at a trustee's sale under~~  
25 ~~subdivision (c), no recording authorized by this section~~  
26 ~~shall operate to defeat the interest of a bona fide~~  
27 ~~purchaser or encumbrancer.~~

28 *(e) No recording authorized by this section shall*  
29 *operate to defeat the interest of a bona fide purchaser or*  
30 *encumbrancer. A bidder at a trustee's sale under*  
31 *subdivision (c) shall not be deemed a bona fide purchaser*  
32 *or encumbrancer for purposes of this section.*

33 ~~SEC. 2.~~

34 *SEC. 10.* Section 2924 of the Civil Code is amended to  
35 read:

36 2924. Every transfer of an interest in property, other  
37 than in trust, made only as a security for the performance  
38 of another act, is to be deemed a mortgage, except when  
39 in the case of personal property it is accompanied by  
40 actual change of possession, in which case it is to be

1 deemed a pledge. Where, by a mortgage created after  
2 July 27, 1917, of any estate in real property, other than an  
3 estate at will or for years, less than two, or in any transfer  
4 in trust made after July 27, 1917, of a like estate to secure  
5 the performance of an obligation, a power of sale is  
6 conferred upon the mortgagee, trustee, or any other  
7 person, to be exercised after a breach of the obligation for  
8 which that mortgage or transfer is a security, the power  
9 shall not be exercised except where the mortgage or  
10 transfer is made pursuant to an order, judgment, or  
11 decree of a court of record, or to secure the payment of  
12 bonds or other evidences of indebtedness authorized or  
13 permitted to be issued by the Commissioner of  
14 Corporations, or is made by a public utility subject to the  
15 provisions of the Public Utilities Act, until (a) the trustee,  
16 mortgagee, or beneficiary, or any of their authorized  
17 agents shall first file for record, in the office of the  
18 recorder of each county wherein the mortgaged or trust  
19 property or some part or parcel thereof is situated, a  
20 notice of default, identifying the mortgage or deed of  
21 trust by stating the name or names of the trustor or  
22 trustors and giving the book and page, or instrument  
23 number, if applicable, where the same is recorded or a  
24 description of the mortgaged or trust property and  
25 containing a statement that a breach of the obligation for  
26 which the mortgage or transfer in trust is security has  
27 occurred, and setting forth the nature of each breach  
28 actually known to the beneficiary and of his or her  
29 election to sell or cause to be sold the property to satisfy  
30 that obligation and any other obligation secured by the  
31 deed of trust or mortgage that is in default, and where the  
32 default is curable pursuant to Section 2924c, containing  
33 the statement specified in paragraph (1) of subdivision  
34 (b) of Section 2924c; (b) not less than three months shall  
35 thereafter elapse; and (c) after the lapse of the three  
36 months the mortgagee, trustee or other person  
37 authorized to take the sale shall give notice of sale, stating  
38 the time and place thereof, in the manner and for a time  
39 not less than that set forth in Section 2924f. In performing  
40 acts required by this article, the trustee shall incur no



1 liability for any good faith error resulting from reliance on  
2 information provided in good faith by the beneficiary  
3 *regarding the nature and the amount of the default under*  
4 *the secured obligation, deed or trust, or mortgage.* A  
5 recital in the deed executed pursuant to the power of sale  
6 of compliance with all requirements of law regarding the  
7 mailing of copies of notices or the publication of a copy of  
8 the notice of default or the personal delivery of the copy  
9 of the notice of default or the posting of copies of the  
10 notice of sale or the publication of a copy thereof shall  
11 constitute prima facie evidence of compliance with these  
12 requirements and conclusive evidence thereof in favor of  
13 bona fide purchasers and encumbrancers for value and  
14 without notice. The mailing, publication, and delivery of  
15 notices as required herein, and the performance of the  
16 procedures set forth in this article, shall constitute  
17 privileged communications within Section 47. There is a  
18 rebuttable presumption that the beneficiary actually  
19 knew of all unpaid loan payments on the obligation owed  
20 to the beneficiary and secured by the deed of trust or  
21 mortgage subject to the notice of default. However, the  
22 failure to include an actually known default shall not  
23 invalidate the notice of sale and the beneficiary shall not  
24 be precluded from asserting a claim to this omitted  
25 default or defaults in a separate notice of default.

26 ~~SEC. 3.~~

27 *SEC. 11.* Section 2924c of the Civil Code is amended  
28 to read:

29 2924c. (a) (1) Whenever all or a portion of the  
30 principal sum of any obligation secured by deed of trust  
31 or mortgage on real property or an estate for years  
32 therein hereafter executed has, prior to the maturity date  
33 fixed in that obligation, become due or been declared due  
34 by reason of default in payment of interest or of any  
35 installment of principal, or by reason of failure of trustor  
36 or mortgagor to pay, in accordance with the terms of that  
37 obligation or of the deed of trust or mortgage, taxes,  
38 assessments, premiums for insurance, or advances made  
39 by beneficiary or mortgagee in accordance with the  
40 terms of that obligation or of the deed of trust or

1 mortgage, the trustor or mortgagor or his or her successor  
2 in interest in the mortgaged or trust property or any part  
3 thereof, or any beneficiary under a subordinate deed of  
4 trust or any other person having a subordinate lien or  
5 encumbrance of record thereon, at any time within the  
6 period specified in subdivision (e), if the power of sale  
7 therein is to be exercised, or, otherwise at any time prior  
8 to entry of the decree of foreclosure, may pay to the  
9 beneficiary or the mortgagee or their successors in  
10 interest, respectively, the entire amount due, at the time  
11 payment is tendered, with respect to (A) all amounts of  
12 principal, interest, taxes, assessments, insurance  
13 premiums, or advances actually known by the beneficiary  
14 to be, and that are, in default and shown in the notice of  
15 default, under the terms of the deed of trust or mortgage  
16 and the obligation secured thereby, (B) all amounts in  
17 default on recurring obligations not shown in the notice  
18 of default, and (C) all reasonable costs and expenses,  
19 subject to subdivision (c), which are actually incurred in  
20 enforcing the terms of the obligation, deed of trust, or  
21 mortgage, and trustee's or attorney's fees, subject to  
22 subdivision (d), other than the portion of principal as  
23 would not then be due had no default occurred, and  
24 thereby cure the default theretofore existing, and  
25 thereupon, all proceedings theretofore had or instituted  
26 shall be dismissed or discontinued and the obligation and  
27 deed of trust or mortgage shall be reinstated and shall be  
28 and remain in force and effect, the same as if the  
29 acceleration had not occurred. This section does not  
30 apply to bonds or other evidences of indebtedness  
31 authorized or permitted to be issued by the  
32 Commissioner of Corporations or made by a public utility  
33 subject to the Public Utilities Code. For the purposes of  
34 this subdivision, the term "recurring obligation" means  
35 all amounts of principal and interest on the loan, or rents,  
36 subject to the deed of trust or mortgage in default due  
37 after the notice of default is recorded; all amounts of  
38 principal and interest or rents advanced on senior liens or  
39 leaseholds which are advanced after the recordation of  
40 the notice of default; and payments of taxes, assessments,

1 and hazard insurance advanced after recordation of the  
2 notice of default. Where the beneficiary or mortgagee has  
3 made no advances on defaults which would constitute  
4 recurring obligations, the beneficiary or mortgagee may  
5 require the trustor or mortgagor to provide reliable  
6 written evidence that the amounts have been paid prior  
7 to reinstatement.

8 (2) If the trustor, mortgagor, or other person  
9 authorized to cure the default pursuant to this subdivision  
10 does cure the default, the beneficiary or mortgagee or the  
11 agent for the beneficiary or mortgagee shall, within 21  
12 days following the reinstatement, execute and deliver to  
13 the trustee a notice of rescission which rescinds the  
14 declaration of default and demand for sale and advises the  
15 trustee of the date of reinstatement. The trustee shall  
16 cause the notice of rescission to be recorded within 30  
17 days of receipt of the notice of rescission and of all  
18 allowable fees and costs.

19 No charge, except for the recording fee, shall be made  
20 against the trustor or mortgagor for the execution and  
21 recordation of the notice which rescinds the declaration  
22 of default and demand for sale.

23 (b) (1) The notice, of any default described in this  
24 section, recorded pursuant to Section 2924, and mailed to  
25 any person pursuant to Section 2924b, shall begin with the  
26 following statement, printed or typed thereon:

27  
28 “IMPORTANT NOTICE [14-point boldface type if  
29 printed or in capital letters if typed]  
30

31 IF YOUR PROPERTY IS IN FORECLOSURE  
32 BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS,  
33 IT MAY BE SOLD WITHOUT ANY COURT ACTION,  
34 [14-point boldface type if printed or in capital letters if  
35 typed] and you may have the legal right to bring your  
36 account in good standing by paying all of your past due  
37 payments plus permitted costs and expenses within the  
38 time permitted by law for reinstatement of your account,  
39 which is normally five business days prior to the date set  
40 for the sale of your property. No sale date may be set until



1 three months from the date this notice of default may be  
2 recorded (which date of recordation appears on this  
3 notice).

4  
5 This amount is \_\_\_\_\_ as of \_\_\_\_\_  
6 (Date)  
7

8 and will increase until your account becomes current.  
9

10 While your property is in foreclosure, you still must pay  
11 other obligations (such as insurance and taxes) required  
12 by your note and deed of trust or mortgage. If you fail to  
13 make future payments on the loan, pay taxes on the  
14 property, provide insurance on the property, or pay other  
15 obligations as required in the note and deed of trust or  
16 mortgage, the beneficiary or mortgagee may insist that  
17 you do so in order to reinstate your account in good  
18 standing. In addition, the beneficiary or mortgagee may  
19 require as a condition to reinstatement that you provide  
20 reliable written evidence that you paid all senior liens,  
21 property taxes, and hazard insurance premiums.

22 Upon your written request, the beneficiary or  
23 mortgagee will give you a written itemization of the  
24 entire amount you must pay. You may not have to pay the  
25 entire unpaid portion of your account, even though full  
26 payment was demanded, but you must pay all amounts in  
27 default at the time payment is made. However, you and  
28 your beneficiary or mortgagee may mutually agree in  
29 writing prior to the time the notice of sale is posted  
30 (which may not be earlier than the end of the  
31 three-month period stated above) to, among other  
32 things, 1) provide additional time in which to cure the  
33 default by transfer of the property or otherwise; or (2)  
34 establish a schedule of payments in order to cure your  
35 default; or both (1) and (2).

36 Following the expiration of the time period referred to  
37 in the first paragraph of this notice, unless the obligation  
38 being foreclosed upon or a separate written agreement  
39 between you and your creditor permits a longer period,  
40 you have only the legal right to stop the sale of your



1 property by paying the entire amount demanded by your  
2 creditor.

3 To find out the amount you must pay, or to arrange for  
4 payment to stop the foreclosure, or if your property is in  
5 foreclosure for any other reason, contact:

6

7

8

(Name of beneficiary or mortgagee)

9

10

11

(Mailing address)

12

13

14

(Telephone)

15

16 If you have any questions, you should contact a lawyer  
17 or the governmental agency which may have insured  
18 your loan.

19 Notwithstanding the fact that your property is in  
20 foreclosure, you may offer your property for sale,  
21 provided the sale is concluded prior to the conclusion of  
22 the foreclosure.

23 Remember, **YOU MAY LOSE LEGAL RIGHTS IF**  
24 **YOU DO NOT TAKE PROMPT ACTION.** [14-point  
25 boldface type if printed or in capital letters if typed]”

26

27 Unless otherwise specified, the notice, if printed, shall  
28 appear in at least 12-point boldface type.

29 If the obligation secured by the deed of trust or  
30 mortgage is a contract or agreement described in  
31 paragraph (1) or (4) of subdivision (a) of Section 1632,  
32 the notice required herein shall be in Spanish if the  
33 trustor requested a Spanish language translation of the  
34 contract or agreement pursuant to Section 1632. If the  
35 obligation secured by the deed of trust or mortgage is  
36 contained in a home improvement contract, as defined in  
37 Sections 7151.2 and 7159 of the Business and Professions  
38 Code, which is subject to Title 2 (commencing with  
39 Section 1801), the seller shall specify on the contract  
40 whether or not the contract was principally negotiated in





1 Spanish and if the contract was principally negotiated in  
 2 Spanish, the notice required herein shall be in Spanish.  
 3 No assignee of the contract or person authorized to  
 4 record the notice of default shall incur any obligation or  
 5 liability for failing to mail a notice in Spanish unless  
 6 Spanish is specified in the contract or the assignee or  
 7 person has actual knowledge that the secured obligation  
 8 was principally negotiated in Spanish. Unless specified in  
 9 writing to the contrary, a copy of the notice required by  
 10 subdivision (c) of Section 2924b shall be in English.

11 (2) Any failure to comply with the provisions of this  
 12 subdivision shall not affect the validity of a sale in favor  
 13 of a bona fide purchaser or the rights of an encumbrancer  
 14 for value and without notice.

15 (c) Costs and expenses which may be charged  
 16 pursuant to Sections 2924 to 2924i, inclusive, shall be  
 17 limited to the costs incurred for recording, mailing,  
 18 including certified and express mail charges, publishing,  
 19 and posting notices required by Sections 2924 to 2924i,  
 20 inclusive, postponement pursuant to Section 2924g not to  
 21 exceed fifty dollars (\$50) per postponement and a fee for  
 22 a trustee's sale guarantee or, in the event of judicial  
 23 foreclosure, a litigation guarantee. For purposes of this  
 24 subdivision, a trustee or beneficiary may purchase a  
 25 trustee's sale guarantee at a rate meeting the standards  
 26 contained in Sections 12401.1 and 12401.3 of the Insurance  
 27 Code.

28 (d) Trustee's or attorney's fees which may be charged  
 29 pursuant to subdivision (a), or until the notice of sale is  
 30 deposited in the mail to the trustor as provided in Section  
 31 2924b, if the sale is by power of sale contained in the deed  
 32 of trust or mortgage, or, otherwise at any time prior to the  
 33 decree of foreclosure, are hereby authorized to be in an  
 34 amount which does not exceed two hundred forty dollars  
 35 (\$240) with respect to any portion of the unpaid principal  
 36 sum secured which is fifty thousand dollars (\$50,000) or  
 37 less, plus one-half of 1 percent of the unpaid principal sum  
 38 secured exceeding fifty thousand dollars (\$50,000) up to  
 39 and including one hundred fifty thousand dollars  
 40 (\$150,000), plus one-quarter of 1 percent of any portion

1 of the unpaid principal sum secured exceeding one  
2 hundred fifty thousand dollars (\$150,000) up to and  
3 including five hundred thousand dollars (\$500,000), plus  
4 one-eighth of 1 percent of any portion of the unpaid  
5 principal sum secured exceeding five hundred thousand  
6 dollars (\$500,000). Any charge for trustee's or attorney's  
7 fees authorized by this subdivision shall be conclusively  
8 presumed to be lawful and valid where the charge does  
9 not exceed the amounts authorized herein. For purposes  
10 of this subdivision, the unpaid principal sum secured shall  
11 be determined as of the date the notice of default is  
12 recorded.

13 (e) Reinstatement of a monetary default under the  
14 terms of an obligation secured by a deed of trust, or  
15 mortgage may be made at any time within the period  
16 commencing with the date of recordation of the notice of  
17 default until five business days prior to the date of sale set  
18 forth in the initial recorded notice of sale.

19 In the event the sale does not take place on the date set  
20 forth in the initial recorded notice of sale or a subsequent  
21 recorded notice of sale is required to be given, the right  
22 of reinstatement shall be revived as of the date of  
23 recordation of the subsequent notice of sale, and shall  
24 continue from that date until five business days prior to  
25 the date of sale set forth in the subsequently recorded  
26 notice of sale.

27 In the event the date of sale is postponed on the date  
28 of sale set forth in either an initial or any subsequent  
29 notice of sale, or is postponed on the date declared for sale  
30 at an immediately preceding postponement of sale, and,  
31 the postponement is for a period which exceeds five  
32 business days from the date set forth in the notice of sale,  
33 or declared at the time of postponement, then the right  
34 of reinstatement is revived as of the date of  
35 postponement and shall continue from that date until five  
36 business days prior to the date of sale declared at the time  
37 of the postponement.

38 Nothing contained herein shall give rise to a right of  
39 reinstatement during the period of five business days



1 prior to the date of sale, whether the date of sale is noticed  
2 in a notice of sale or declared at a postponement of sale.

3 Pursuant to the terms of this subdivision, no  
4 beneficiary, trustee, mortgagee, or their agents or  
5 successors shall be liable in any manner to a trustor,  
6 mortgagor, their agents or successors or any beneficiary  
7 under a subordinate deed of trust or mortgage or any  
8 other person having a subordinate lien or encumbrance  
9 of record thereon for the failure to allow a reinstatement  
10 of the obligation secured by a deed of trust or mortgage  
11 during the period of five business days prior to the sale of  
12 the security property, and no such right of reinstatement  
13 during this period is created by this section. Any right of  
14 reinstatement created by this section is terminated five  
15 business days prior to the date of sale set forth in the initial  
16 date of sale, and is revived only as prescribed herein and  
17 only as of the date set forth herein.

18 As used in this subdivision, the term “business day” has  
19 the same meaning as specified in Section 9.

20 ~~SEC. 4.~~

21 *SEC. 12.* Section 2924f of the Civil Code is amended  
22 to read:

23 2924f. (a) As used in this section and Sections 2924g  
24 and 2924h, “property” means real property or a leasehold  
25 estate therein, and “calendar week” means Monday  
26 through Saturday, inclusive.

27 (b) (1) Except as provided in subdivision (c), before  
28 any sale of property can be made under the power of sale  
29 contained in any deed of trust or mortgage, or any resale  
30 resulting from a rescission for a failure of consideration  
31 pursuant to subdivision (c) of Section 2924h, notice of the  
32 sale thereof shall be given by posting a written notice of  
33 the time of sale and of the street address and the specific  
34 place at the street address where the sale will be held, and  
35 describing the property to be sold, at least 20 days before  
36 the date of sale in one public place in the city where the  
37 property is to be sold, if the property is to be sold in a city,  
38 or, if not, then in one public place in the judicial district  
39 in which the property is to be sold, and publishing a copy  
40 once a week for three consecutive calendar weeks, the

1 first publication to be at least 20 days before the date of  
2 sale, in a newspaper of general circulation published in  
3 the city in which the property or some part thereof is  
4 situated, if any part thereof is situated in a city, if not, then  
5 in a newspaper of general circulation published in the  
6 judicial district in which the property or some part  
7 thereof is situated, or in case no newspaper of general  
8 circulation is published in the city or judicial district, as  
9 the case may be, in a newspaper of general circulation  
10 published in the county in which the property or some  
11 part thereof is situated, or in case no newspaper of general  
12 circulation is published in the city or judicial district or  
13 county, as the case may be, in a newspaper of general  
14 circulation published in the county in this state that (A)  
15 is contiguous to the county in which the property or some  
16 part thereof is situated and (B) has, by comparison with  
17 all similarly contiguous counties, the highest population  
18 based upon total county population as determined by the  
19 most recent federal decennial census published by the  
20 Bureau of the Census. A copy of the notice of sale shall also  
21 be posted in a conspicuous place on the property to be  
22 sold at least 20 days before the date of sale, where possible  
23 and where not restricted for any reason. If the property  
24 is a single-family residence the posting shall be on a door  
25 of the residence, but, if not possible or restricted, then the  
26 notice shall be posted in a conspicuous place on the  
27 property; however, if access is denied because a common  
28 entrance to the property is restricted by a guard gate or  
29 similar impediment, the property may be posted at that  
30 guard gate or similar impediment to any development  
31 community. Additionally, the notice of sale shall conform  
32 to the minimum requirements of Section 6043 of the  
33 Government Code and be recorded with the county  
34 recorder of the county in which the property or some part  
35 thereof is situated at least 14 days prior to the date of sale.  
36 The notice of sale shall contain the name, street address  
37 ~~in this state, and telephone number in this state~~ *in this*  
38 *state, which may reflect an agent of the trustee, and*  
39 *either a toll-free telephone number or telephone number*  
40 *in this state* of the trustee, and the name of the original

1 trustor, and also shall contain the statement required by  
2 paragraph (3) of subdivision (c). In addition to any other  
3 description of the property, the notice shall describe the  
4 property by giving its street address, if any, or other  
5 common designation, if any, and a county assessor's  
6 parcel number; but if the property has no street address  
7 or other common designation, the notice shall contain a  
8 legal description of the property, the name and address  
9 of the beneficiary at whose request the sale is to be  
10 conducted, and a statement that directions may be  
11 obtained pursuant to a written request submitted to the  
12 beneficiary within 10 days from the first publication of the  
13 notice. Directions shall be deemed reasonably sufficient  
14 to locate the property if information as to the location of  
15 the property is given by reference to the direction and  
16 approximate distance from the nearest crossroads,  
17 frontage road, or access road. If a legal description or a  
18 county assessor's parcel number and either a street  
19 address or another common designation of the property  
20 is given, the validity of the notice and the validity of the  
21 sale shall not be affected by the fact that the street  
22 address, other common designation, name and address of  
23 the beneficiary, or the directions obtained therefrom are  
24 erroneous or that the street address, other common  
25 designation, name and address of the beneficiary, or  
26 directions obtained therefrom are omitted. The term  
27 "newspaper of general circulation," as used in this  
28 section, has the same meaning as defined in Article 1  
29 (commencing with Section 6000) of Chapter 1 of Division  
30 7 of Title 1 of the Government Code.

31 The notice of sale shall contain a statement of the total  
32 amount of the unpaid balance of the obligation secured  
33 by the property to be sold and reasonably estimated costs,  
34 expenses, advances at the time of the initial publication  
35 of the notice of sale, and, if republished pursuant to a  
36 cancellation of a cash equivalent pursuant to subdivision  
37 (d) of Section 2924h, a reference of that fact; provided,  
38 that the trustee shall incur no liability for any good faith  
39 error in stating the proper amount, including any amount  
40 provided in good faith by or on behalf of the beneficiary.

1 An inaccurate statement of this amount shall not affect  
2 the validity of any sale to a bona fide purchaser for value,  
3 nor shall the failure to post the notice of sale on a door as  
4 provided by this subdivision affect the validity of any sale  
5 to a bona fide purchaser for value.

6 (2) If the sale of the property is to be a unified sale as  
7 provided in subparagraph (ii) of paragraph (a) of  
8 subdivision (4) of Section 9501 of the Commercial Code,  
9 the notice of sale shall also contain a description of the  
10 personal property or fixtures to be sold. In the case where  
11 it is contemplated that all of the personal property or  
12 fixtures are to be sold, the description in the notice of the  
13 personal property or fixtures shall be sufficient if it is the  
14 same as the description of the personal property or  
15 fixtures contained in the agreement creating the security  
16 interest in or encumbrance on the personal property or  
17 fixtures or the filed financing statement relating to the  
18 personal property or fixtures. In all other cases, the  
19 description in the notice shall be sufficient if it would be  
20 a sufficient description of the personal property or  
21 fixtures under Section 9110 of the Commercial Code.  
22 Inclusion of a reference to or a description of personal  
23 property or fixtures in a notice of sale hereunder shall not  
24 constitute an election by the secured party to conduct a  
25 unified sale pursuant to subparagraph (ii) of paragraph  
26 (a) of subdivision (4) of Section 9501 of the Commercial  
27 Code, shall not obligate the secured party to conduct a  
28 unified sale pursuant to subparagraph (ii) of paragraph  
29 (a) of subdivision (4) of Section 9501 of the Commercial  
30 Code, and in no way shall render defective or  
31 noncomplying either that notice or a sale pursuant to that  
32 notice by reason of the fact that the sale includes none or  
33 less than all of the personal property or fixtures referred  
34 to or described in the notice. This paragraph shall not  
35 otherwise affect the obligations or duties of a secured  
36 party under the Commercial Code.

37 (c) (1) This subdivision applies only to deeds of trust  
38 or mortgages which contain a power of sale and which are  
39 secured by real property containing a single-family,  
40 owner-occupied residence, where the obligation secured

1 by the deed of trust or mortgage is contained in a contract  
2 for goods or services subject to the provisions of the  
3 Unruh Act (Chapter 1 (commencing with Section 1801)  
4 of Title 2 of Part 4 of Division 3).

5 (2) Except as otherwise expressly set forth in this  
6 subdivision, all other provisions of law relating to the  
7 exercise of a power of sale shall govern the exercise of a  
8 power of sale contained in a deed of trust or mortgage  
9 described in paragraph (1).

10 (3) If any default of the obligation secured by a deed  
11 of trust or mortgage described in paragraph (1) has not  
12 been cured within 30 days after the recordation of the  
13 notice of default, the trustee or mortgagee shall mail to  
14 the trustor or mortgagor, at his or her last known address,  
15 a copy of the following statement:

16  
17 YOU ARE IN DEFAULT UNDER A

18 \_\_\_\_\_,  
19 (Deed of trust or mortgage)

20 DATED \_\_\_\_\_. UNLESS YOU TAKE ACTION TO PROTECT  
21 YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF  
22 YOU NEED AN EXPLANATION OF THE NATURE OF THE  
23 PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A  
24 LAWYER.  
25

26 (4) All sales of real property pursuant to a power of sale  
27 contained in any deed of trust or mortgage described in  
28 paragraph (1) shall be held in the county where the  
29 residence is located and shall be made to the person  
30 making the highest offer. The trustee may receive offers  
31 during the 10-day period immediately prior to the date of  
32 sale and if any offer is accepted in writing by both the  
33 trustor or mortgagor and the beneficiary or mortgagee  
34 prior to the time set for sale, the sale shall be postponed  
35 to a date certain and prior to which the property may be  
36 conveyed by the trustor to the person making the offer  
37 according to its terms. The offer is revocable until  
38 accepted. The performance of the offer, following  
39 acceptance, according to its terms, by a conveyance of the  
40 property to the offeror, shall operate to terminate any



1 further proceeding under the notice of sale and it shall be  
2 deemed revoked.

3 (5) In addition to the trustee fee pursuant to Section  
4 2924c, the trustee or mortgagee pursuant to a deed of  
5 trust or mortgage subject to this subdivision shall be  
6 entitled to charge an additional fee of fifty dollars (\$50).

7 (6) This subdivision applies only to property on which  
8 notices of default were filed on or after the effective date  
9 of this subdivision.

10 ~~SEC. 5.~~

11 *SEC. 13.* Section 2924j of the Civil Code is amended  
12 to read:

13 2924j. (a) Unless an interpleader action has been  
14 filed, within 30 days of the execution of the trustee's deed  
15 resulting from a sale in which there are proceeds  
16 remaining after payment of the amounts required by  
17 paragraphs (1) and (2) of subdivision (a) of Section  
18 2924k, the trustee shall send written notice to all persons  
19 with recorded interests in the real property as of the date  
20 immediately prior to the trustee's sale who would be  
21 entitled to notice pursuant to subdivisions (b) and (c) of  
22 Section 2924b. The notice shall be sent by first-class mail  
23 in the manner provided in paragraph (1) of subdivision  
24 (c) of Section 2924b and inform each entitled person of  
25 each of the following:

26 (1) That there has been a trustee's sale of the described  
27 real property.

28 (2) That the noticed person may have a claim to all or  
29 a portion of the sale proceeds remaining after payment  
30 of the amounts required by paragraphs (1) and (2) of  
31 subdivision (a) of Section 2924k.

32 (3) The noticed person may contact the trustee at the  
33 address provided in the notice to pursue any potential  
34 claim.

35 (4) That before the trustee can act, the noticed person  
36 may be required to present proof of ownership of the  
37 obligation and the security interest therefore, or, in the  
38 alternative, and indemnity in the amount of the  
39 obligation or both. The noticed person also shall submit



1 a written claim to the trustee, executed under penalty of  
2 perjury, stating the following:

3 (A) The amount of the claim to the date of trustee's  
4 sale.

5 (B) An itemized statement of the principal, interest,  
6 and other charges.

7 (C) That claims must be received by the trustee at the  
8 address stated in the notice no later than 30 days after the  
9 date the trustee sends notice to the potential claimant.

10 (b) The trustee shall exercise due diligence to  
11 determine the priority of the written claims received by  
12 the trustee to the trustee's sale surplus proceeds from  
13 those persons to whom notice was sent pursuant to  
14 subdivision (a). In the event there is no dispute as to the  
15 priority of the written claims submitted to the trustee,  
16 proceeds shall be paid within 30 days after the conclusion  
17 of the notice period. If the trustee has failed to determine  
18 the priority of written claims within 90 days following the  
19 30-day notice period, then within 10 days thereafter the  
20 trustee shall deposit the funds with the clerk of the court  
21 pursuant to subdivision (c) or file an interpleader action  
22 pursuant to subdivision (e). Nothing in this section shall  
23 preclude any person from pursuing other remedies or  
24 claims as to surplus proceeds.

25 (c) If, after due diligence, the trustee is unable to  
26 determine the priority of the written claims received by  
27 the trustee to the trustee's sale surplus of multiple persons  
28 or if the trustee determines there is a conflict between  
29 potential claimants, the trustee may file a declaration of  
30 the unresolved claims and deposit with the clerk of the  
31 superior or municipal court, as applicable, of the county  
32 in which the sale occurred, that portion of the sales  
33 proceeds that cannot be distributed, less any fees charged  
34 by the clerk pursuant to this subdivision. The declaration  
35 shall specify the date of the trustee's sale, a description of  
36 the property, the names and addresses of all persons sent  
37 notice pursuant to subdivision (a), a statement that the  
38 trustee exercised due diligence pursuant to subdivision  
39 (b), that the trustee provided written notice as required  
40 by subdivisions (a) and (d) and the amount of the sales

1 proceeds deposited by the trustee with the superior or  
2 municipal court. Further, the trustee shall submit a copy  
3 of the trustee's sales guarantee and any information  
4 relevant to the identity, location, and priority of the  
5 potential claimants with the superior or municipal court  
6 and shall file proof of service of the notice required by  
7 subdivision (d) on all persons described in subdivision  
8 (a).

9 The clerk shall deposit the amount with the county  
10 treasurer subject to order of the superior or municipal  
11 court upon the application of any interested party. The  
12 clerk may charge a reasonable fee for the performance of  
13 activities pursuant to this subdivision equal to the fee for  
14 filing an interpleader action pursuant to Article 2  
15 (commencing with Section 26820) of Division 2 of Title  
16 3 of the Government Code. Upon deposit of that portion  
17 of the sale proceeds that cannot be distributed by due  
18 diligence, the trustee shall be discharged of further  
19 responsibility for the disbursement of sale proceeds. A  
20 deposit with the clerk of the superior or municipal court  
21 pursuant to this subdivision may be either for the total  
22 proceeds of the trustee's sale, less any fees charged by the  
23 clerk, if a conflict or conflicts exist with respect to the total  
24 proceeds, or that portion that cannot be distributed after  
25 due diligence, less any fees charged by the clerk.

26 (d) Before the trustee deposits the funds with the  
27 clerk of the court pursuant to subdivision (c), the trustee  
28 shall send written notice by first-class mail, postage  
29 prepaid, to all persons described in subdivision (a)  
30 informing them that the trustee intends to deposit the  
31 funds with the clerk of the superior or municipal court,  
32 as applicable, and that a claim for the funds must be filed  
33 with the court within 30 days from the date of the notice,  
34 providing the address of the court in which the funds  
35 were deposited, and a phone number for obtaining  
36 further information.

37 Within 90 days after deposit with the clerk, the court  
38 shall consider all claims filed at least 15 days before the  
39 date on which the hearing is scheduled by the court, the  
40 clerk shall serve written notice of the hearing by first-class



1 mail on all claimants identified in the trustees' declaration  
2 at the addresses specified therein. The court shall  
3 distribute the deposited funds to any and all claimants  
4 entitled thereto.

5 (e) Nothing in this section restricts the ability of a  
6 trustee to file an interpleader action in order to resolve  
7 a dispute about the proceeds of a trustee's sale. Once an  
8 interpleader action has been filed, thereafter the  
9 provisions of this section shall not apply.

10 (f) "Due diligence," for the purposes of this section  
11 means that the trustee researched the written claims  
12 submitted or other evidence of conflicts and determined  
13 that a conflict of priorities exists between two or more  
14 claimants which the trustee is unable to resolve.

15 (g) A trustee in possession of surplus proceeds not  
16 required to be deposited with the court pursuant to  
17 subdivision (b) shall comply with the Unclaimed  
18 Property Law (Chapter 7 (commencing with Section  
19 1500) of Title 10 of Part 3 of the Code of Civil Procedure).

20 (h) Prior to July 1, 2000, the Judicial Council shall  
21 adopt a form to accomplish the filing authorized by this  
22 section.

23 ~~SEC. 6.~~

24 *SEC. 14.* Section 2924k of the Civil Code is amended  
25 to read:

26 2924k. (a) The trustee, or the clerk of the court upon  
27 order to the clerk pursuant to subdivision (d) of Section  
28 2924j, shall distribute the proceeds, or a portion of the  
29 proceeds, as the case may be, of the trustee's sale  
30 conducted pursuant to Section 2924h in the following  
31 order of priority:

32 (1) To the costs and expenses of exercising the power  
33 of sale and of sale, including the payment of the trustee's  
34 fees and attorney's fees permitted pursuant to subdivision  
35 (b) of Section 2924d and subdivision (b) of this section.

36 (2) To the payment of the obligations secured by the  
37 deed of trust or mortgage which is the subject of the  
38 trustee's sale.

(3) To satisfy the outstanding balance of obligations secured by any junior liens or encumbrances in the order of their priority.

(4) To the trustor or the trustor's successor in interest. In the event the property is sold or transferred to another, to the vested owner of record at the time of the trustee's sale.

(b) A trustee may charge costs and expenses incurred for such items as mailing and a reasonable fee for services rendered in connection with the distribution of the proceeds from a trustee's sale, including, but not limited to, the investigation of priority and validity of claims and the disbursement of funds. If the fee charged for services rendered pursuant to this subdivision does not exceed one hundred dollars (\$100), or one hundred fifty dollars (\$150) where there are obligations specified in paragraph (3) of subdivision (a), the fee is conclusively presumed to be reasonable.

~~SEC. 7.~~

*SEC. 15.* Section 2924I of the Civil Code is amended to read:

2924I. (a) In the event that a trustee under a deed of trust is named in an action or proceeding in which that deed of trust is the subject, and in the event that the trustee maintains a reasonable belief that it has been named in the action or proceeding solely in its capacity as trustee, and not arising out of any wrongful acts or omissions on its part in the performance of its duties as trustee, then, at any time, the trustee may file a declaration of nonmonetary status. The declaration shall be served on the parties in the manner set forth in Chapter 5 (commencing with Section 1010) of Title 14 of the Code of Civil Procedure.

(b) The declaration of nonmonetary status shall set forth the status of the trustee as trustee under the deed of trust that is the subject of the action or proceeding, that the trustee knows or maintains a reasonable belief that it has been named as a defendant in the proceeding solely in its capacity as a trustee under the deed of trust, its reasonable belief that it has not been named as a

1 defendant due to any acts or omissions on its part in the  
2 performance of its duties as trustee, the basis for that  
3 knowledge or reasonable belief, and that it agrees to be  
4 bound by whatever order or judgment is issued by the  
5 court regarding the subject deed of trust.

6 (c) The parties who have appeared in the action or  
7 proceeding shall have 15 days from the service of the  
8 declaration by the trustee in which to object to the  
9 nonmonetary judgment status of the trustee. Any  
10 objection shall set forth the factual basis on which the  
11 objection is based and shall be served on the trustee.

12 (d) In the event that no objection is served within the  
13 15-day objection period, then the trustee shall not be  
14 required to participate any further in the action or  
15 proceeding, shall not be subject to any monetary awards  
16 as and for damages, attorneys fees or costs, shall be  
17 required to respond to any discovery requests as a  
18 nonparty, and shall be bound by any court order relating  
19 to the subject deed of trust that is the subject of the action  
20 or proceeding.

21 (e) In the event of a timely objection to the  
22 declaration of nonmonetary status, the trustee shall  
23 thereafter be required to participate in the action or  
24 proceeding.

25 Additionally, in the event that the parties elect not to,  
26 or fail to, timely object to the declaration of nonmonetary  
27 status, but later through discovery, or otherwise,  
28 determine that the trustee should participate in the  
29 action because of the performance of its duties as a  
30 trustee, the parties may file and serve on all parties and  
31 the trustee a motion pursuant to Section 473 of the Code  
32 of Civil Procedure that specifies the factual basis for the  
33 demand. Upon the court's granting of the motion, the  
34 trustee shall thereafter be required to participate in the  
35 action or proceeding.

36 (f) Upon the filing of the declaration of nonmonetary  
37 status, the time within which the trustee is required to file  
38 an answer or other responsive pleading shall be tolled for  
39 the period of time within which the opposing parties may  
40 respond to the declaration. Upon the timely service of an

1 objection to the declaration on nonmonetary status, the  
2 trustee shall have 30 days from the date of service within  
3 which to file an answer or other responsive pleading to  
4 the complaint or cross-complaint.

5 (g) For purposes of this section, “trustee” includes any  
6 agent or employee of the trustee who performs some or  
7 all of the duties of a trustee under this article.

8 ~~SEC. 8.~~

9 *SEC. 16.* Section 2934a of the Civil Code, as added by  
10 Section 2.5 of Chapter 754 of the Statutes of 1993, is  
11 amended to read:

12 2934a. (a) (1) The trustee under a trust deed upon  
13 real property or an estate for years therein given to secure  
14 an obligation to pay money and conferring no other  
15 duties upon the trustee than those which are incidental  
16 to the exercise of the power of sale therein conferred, may  
17 be substituted by the recording in the county in which the  
18 property is located of a substitution executed and  
19 acknowledged by: (A) all of the beneficiaries under the  
20 trust deed, or their successors in interest, and the  
21 substitution shall be effective notwithstanding any  
22 contrary provision in any trust deed executed on or after  
23 January 1, 1968; or (B) the holders of more than 50  
24 percent of the record beneficial interest of a series of  
25 notes secured by the same real property or of undivided  
26 interests in a note secured by real property equivalent to  
27 a series transaction, exclusive of any notes or interests of  
28 a licensed real estate broker that is the issuer or servicer  
29 of the notes or interests or of any affiliate of that licensed  
30 real estate broker.

31 (2) A substitution executed pursuant to subparagraph  
32 (B) of paragraph (1) is not effective unless all the parties  
33 signing the substitution sign, under penalty of perjury, a  
34 separate written document stating the following:

35 (A) The substitution has been signed pursuant to  
36 subparagraph (B) of paragraph (1).

37 (B) None of the undersigned is a licensed real estate  
38 broker or an affiliate of the broker that is the issuer or  
39 servicer of the obligation secured by the deed of trust.

1 (C) The undersigned together hold more than 50  
2 percent of the record beneficial interest of a series of  
3 notes secured by the same real property or of undivided  
4 interests in a note secured by real property equivalent to  
5 a series transaction.

6 (D) Notice of the substitution was sent by certified  
7 mail, postage prepaid, with return receipt requested to  
8 each holder of an interest in the obligation secured by the  
9 deed of trust who has not joined in the execution of the  
10 substitution or the separate document.

11 The separate document shall be attached to the  
12 substitution and be recorded in the office of the county  
13 recorder of each county in which the real property  
14 described in the deed of trust is located. Once the  
15 document required by this paragraph is recorded, it shall  
16 constitute conclusive evidence of compliance with the  
17 requirements of this paragraph in favor of substituted  
18 trustees acting pursuant to this section, subsequent  
19 assignees of the obligation secured by the deed of trust  
20 and subsequent bona fide purchasers or encumbrancers  
21 for value of the real property described therein.

22 (3) For purposes of this section, “affiliate of the  
23 licensed real estate broker” includes any person as  
24 defined in Section 25013 of the Corporations Code that is  
25 controlled by, or is under common control with, or who  
26 controls, a licensed real estate broker. “Control” means  
27 the possession, direct or indirect, of the power to direct  
28 or cause the direction of management and policies.

29 (4) The substitution shall contain the date of  
30 recordation of the trust deed, the name of the trustor, the  
31 book and page or instrument number where the trust  
32 deed is recorded, and the name of the new trustee. From  
33 the time the substitution is filed for record, the new  
34 trustee shall succeed to all the powers, duties, authority,  
35 and title granted and delegated to the trustee named in  
36 the deed of trust. A substitution may be accomplished,  
37 with respect to multiple deeds of trust which are  
38 recorded in the same county in which the substitution is  
39 being recorded and which all have the same trustee and  
40 beneficiary or beneficiaries, by recording a single

1 document, complying with the requirements of this  
2 section, substituting trustees for all those deeds of trust.

3 (b) If the substitution is effected after a notice of  
4 default has been recorded but prior to the recording of  
5 the notice of sale, the beneficiary or beneficiaries or their  
6 authorized agents shall cause a copy of the substitution to  
7 be mailed, prior to the recording thereof, in the manner  
8 provided in Section 2924b, to the trustee then of record  
9 and to all persons to whom a copy of the notice of default  
10 would be required to be mailed by the provisions of  
11 Section 2924b. An affidavit shall be attached to the  
12 substitution that notice has been given to those persons  
13 and in the manner required by this subdivision.

14 (c) Notwithstanding any provision of this section or  
15 any provision in any deed of trust, unless a new notice of  
16 sale containing the name, street address, and telephone  
17 number of the substituted trustee is given pursuant to  
18 Section 2924f, any sale conducted by the substituted  
19 trustee shall be void.

20 (d) This section shall become operative on January 1,  
21 1998.

